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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,581	08/06/2001	Paul McAlinden	ITL.0651US (P12392)	2709
21906 7590 06/29/2007 TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631			EXAMINER NAWAZ, ASAD M	
			ART UNIT 2155	PAPER NUMBER
			MAIL DATE 06/29/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/923,581

Applicant(s)

MCALINDEN, PAUL

Examiner

Asad M. Nawaz

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-13,15-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-13,15-21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This action is responsive to the RCE received 5/29/07. Claims 1, 9, and 17 have been amended. Claims 6, 14, 22, and 24 were previously canceled. No new claims have been added. Accordingly, claims 1-5, 7-14, 15-21, and 23 are pending.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7-12, 15-21, and 23 are rejected under 35 U.S.C. 103(a) as being anticipated by Andreakis et al (US Patent No. 6,816,895), hereinafter referred to as Andreakis further in view of Mukherjee et al (USPGPUB 2003/0073440).

As to claim 1, Andreakis teaches a method comprising: selecting a probe routine based on a client characteristic (col 4, lines 3-22); transferring a selected probe routine from the server to the client and enabling the probe routine to examine a file on the client to determine the capabilities of the client and to provide information back to the server from the probe routine about those client capabilities. (Abstract; col1, lines 15-41; col 2, lines 1-18; col 4, lines 15-29; col5, lines 32-35); maintaining the probe routine on the client for subsequent reactivation (col 2, lines 31-43)

However, Andreakis does not explicitly indicate determining characteristics of a client in order to select a selected probe routine from among at least two available probe routines to transfer from the server to the client. Mukherjee teaches this limitation in defining different information to be transmitted back. (0047-0052)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Mukherjee into those of Andreakis in order to make the system more efficient. By enabling the system to know certain characteristics of a device such as presence information, etc., the system can more fully customize and tailor the data transmission to suit the needs of the device.

Claims 9 and 17 are essentially the product and system for the method of claim 1 above, and thus are rejected under the same rationale.

As to claim 2, Andreakis teaches the method of claim 1 including transferring the selected probe routine over a wireless network. (col 3, lines 17-20 and 49-51)

Claims 10 and 19 are essentially the product and system for the method of claim 2 above, and thus are rejected under the same rationale.

As to claim 3, Andreakis teaches the method of claim 1 including transferring the selected probe routine over a wired network. (col 3, lines 17-20 and 49-51)

Claims 11 and 20 are essentially the product and system for the method of claim 3 above, and thus are rejected under the same rationale.

As to claim 4, Andreakis teaches the method of claim 1 including transferring the selected probe routine over a telephone network. (col 3, lines 21-39)

Claims 12 and 21 are essentially the product and system for the method of claim 4 above, and thus are rejected under the same rationale.

As to claim 7, Andreakis teaches the method of claim 1 wherein said characteristics include classmark information about client. (col 1, lines 59-63; col 4, lines 3-14 and 21-39)

Claims 15 and 23 are essentially the product and system for the method of claim 7 above, and thus are rejected under the same rationale.

As to claim 8, Andreakis teaches the method of claim 7 including using the classmark information to select software to transfer from the server to the client. (col 1, lines 59-63; col 4, lines 3-14 and 21-39)

Claims 16 and 24 are essentially the product and system for the method of claim 8 above, and thus are rejected under the same rationale.

As to claim 18, Andreakis teaches the system of claim 17 including at least one client. (Abstract; Fig 1)

4. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over official notice in view of Microsoft Computer Dictionary (Fifth Edition).

As to claim 5, Andreakis teaches the method of claim 1 but does not teach transferring the software over a local area network. However, Andreakis does teach the use of networks that are wired, wireless, GSM, DCS, WCDMA. It would have been obvious for one in the ordinary skill in the art to use a Local Area Network where the

aforementioned networks are used because a LAN is also used to interconnect nodes by a communications link enabling any device to interact with another.

Claim 13 is rejected under similar rationale.

### ***Response to Arguments***

5. Applicant's arguments filed have been fully considered but they are not persuasive. In substance, the applicant argues that A) the cited references do not teach examining a file on the client B) the cited references do not teach selecting a probe routine based on a client characteristic and C) the cited references do not teach maintaining the probe routine.

6. In response to A), Andreakis teaches the use of a classmark and the use of an RDF file. Both of these file contain client capabilities from which negotiation and customization are achieved (col 2, liens 14-18)

In response to B) Andreakis teaches that in order for a meaningful transfer to be achieved, "the service provider and mobile station must know each other's capabilities and available content". Furthermore, upon receiving a request or an unsolicited information download command, the service provider asks the mobile station what capabilities and preferences it has so that a proper transfer can take place (col 4, lines 3-29)

In response to C), Andreakis teaches that the probe device is downloaded and can reprocess the desired function without the need to recompile (col 2, line 31-42).

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Therefore, Andreakis and Mukherejee still meet the scope of the limitations as currently claimed.

**Conclusion**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asad M. Nawaz whose telephone number is (571) 272-3988. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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SUPERVISORY PATENT EXAMINER